HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 1376 of 2002

Date of Decision: 2.4.2007

Hira Singh ……. Petitioner

Versus

Union of India and Others …….. Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting? Yes.

For the petitioner : Mr. G. D. Verma, Sr. Advocate with Mr. B. C. Verma, Advocate.

For the respondents : Mr. Y. P. S. Dhaulta, Central Govt. Counsel.

Sanjay Karol, J. (Oral)

This judgment is being dictated in open Court in presence of the learned counsel for the parties.

For an alleged theft of two bags of barley and one bag of grams (chana), petitioner has been directed to undergo imprisonment of three months Force custody as per orders dated 21st September, 2001 passed by the Deputy Inspector General of Police, (H.P.), Indo- Tibetan Border Police. It is this part of the order, which is under challenge in the present proceedings. While serving as HC/AT No. 680051027 in T.P.T. Btn. attached with 16th Btn. A. T. Palatoon, Indo- Tibetan Border Police Force, petitioner was tried by Summary Force Court for an alleged theft

---

Whether reporters of Local Papers may be allowed to see the judgment?

of two bags of barley and one bag of grams (chana). Petitioner's defence was to the effect that he had given the keys of the store to his co-accused Constable posted with the petitioner at Sarahan. Vide order dated 12th September, 2000, petitioner was dismissed from service w.e.f. 12th September, 2000 (FN) after trial by Summary Force Court from 18th August, 2000 to 12th September, 2000 (FN). Petitioner was held guilty of committing theft of two bags of barley and one bag of grinded chana sold to nearby civilian horse keeper on 16th January, 2000 from Govt. Store Karcham. His conviction is under Section 33 (a) of Indo- Tibetan Border Police Force Act, 1992 (hereinafter referred to as the Act).

Aggrieved by the said order, petitioner preferred a representation/appeal, which stood decided by the Deputy Inspector General (H. P.) Indo- Tibetan Border Police in terms of his order dated 1st February, 2001. While upholding the sentence, the petitioner's removal from service was reduced to compulsory retirement with full compensation towards pension and gratuity w.e.f. 12th September, 2000 (FN). It has been observed in the said order that the petitioner has held long service of 32 years having 2 good entries and 3 cash rewards with award of 25th Anniversary Medal, Police Spl. Duty Medal with Bar and Sangram Medal-1971.

Still not satisfied, petitioner preferred an appeal to the Inspector General, ITBP, which was decided by the Deputy Inspector General, ITBP in terms of its orders dated 21.9.2001. The order pertaining to petitioner's compulsory retirement was set aside and the petitioner was ordered to be reinstated in service with immediate effect with further directions that the period of absence be regularised in

accordance with Rules. Petitioner stands fully satisfied with regard to the orders passed by the Deputy Inspector General to this extent. However, the grievance of the petitioner pertains to that part of the impugned order wherein the petitioner has been directed to undergo sentence of three months Force custody for his guilt of offence of theft, as proved by the Summary Force Court. The basis on which the petitioner has been directed to undergo sentence of three months shocks judicial conscious. The relevant portion is reproduced as under:-

> "4. And now the said Ex. HC/AT Hira Singh has preferred petition of I. G. (Hqrs.) Dte. Gen. ITB Police with the prayer to modify the order of compulsory retirement issued against him on 01-02-2001 vide DIG (HP) order No. ITBP/SHO (HP) / No-I/HS/2001-683-89. The petition preferred by the above individual was examined in detail with reference to SPC proceedings by the Judgem Attorney General, Dte. Genl. In this case, sole allegations is the theft of 02 bags of barley and 01 bag of gram (chana). The accused Hira Singh has admitted his responsibility for depending on co-accused Const/AT Chhewang Raftan and giving him the keys of the store. At the most it can be supervisory fault / negligence, but there is no admission of committing the offence of theft on behalf of accused. ***There is no physical verification of stock available on case file. In this case it is on record that nobody saw the accsued removing the stolen articles from stock. The alleged recovery is doubtful.*** For the purpose of recovery there should be a proper procedure i.e. preparation of seizure memo. In the presence of two independent witnesses etc. every case should be proved by primary evidence. In the present case the statement of civil contractor was very vital and should have been recorded. ***From the record it appears that accused has been held guilty on the testimony of co-accused.*** As

> per Indian Evidence Act, the evidence of co-accused is a very weak type of evidence. ***The settled law is that there cannot be a conviction on the testimony of co-accused unless corroborated.*** Moreover, when both the accused have been held guilty for the same charge / offence then why two different sentences are awarded to them? All this shows that accused HC/AT Hira Singh has been discriminated in the quantum of sentence. The petition of the above individual was put up to I. G. (Hqrs.) for further consideration that the representation of accused No. 680051027 Ex. HC/AT Hira Singh may be allowed and accordingly the individual be taken back into service. ***If awarding the sentence is necessary then it should not exceed more than the sentence awarded to co-accused Const/At Chhewang Raftan. In this regard, I.G. (Hqrs.) has endorsed his remarks that "Approval is proposed".*** Accordingly, a sentence of 03 months Force custody will meet the ends of justice." { Emphasis added }.

The alleged recovery is doubtful. The officer holds that the conviction on the testimony of co-accused, unless corroborated is not the law. The officer is not even sure as to whether sentence is to be awarded at all. Therefore, he holds that "if awarding the sentence is necessary, it should not exceed the sentence awarded to the co-accused". It is a very strange reasoning to convict a person and make him undergo three months Force imprisonment. The action of the authority is not only arbitrary / irrational but is violative of Article 21 of Constitution of India. In any event, the authority was statutorily required to decide the matter himself, rather than getting an approval from his superior. I am in total agreement with the learned counsel for the petitioner that the order is contradictory. On one hand, he holds that the offence does not stand

proved and on the other hand, he sentenced him three months Force custody. Simply because co-accused has been found guilty of an offence cannot be a ground for awarding sentence to the petitioner whose guilt admittedly does not stand proved. The order of sentence of three months Force custody is obviously not based on independent and subjective determination by the officer. In this view of the matter, the impugned order to the extent where the petitioner is directed to undergo sentence of three months Force custody is set aside. The petitioner in terms of the said order is already entitled for reinstatement and all consequential benefits which the respondents are duty bound to pay to the petitioner in accordance with law.

In this view of the matter, the petition is allowed with costs of Rs.2000/- to be paid to the petitioner.

(Sanjay Karol),
Judge

April 2, 2007.
(rana)